

OGC 72-0490

4 April 1972

MEMORANDUM FOR: Deputy Director for Intelligence
OGC Has Reviewed Deputy Director for Plans
Deputy Director for Science and Technology
Deputy Director for Support
Inspector General
Director of National Estimates
Director of Planning, Programming and Budgeting

SUBJECT: U. S. v. International Business Machines Corporation (69 Civ. 200 S.D.N.Y.)

REFERENCE: Memo fr Chairman, IP Board, to Directorate
IPC's, Subj.: U. S. v. IBM, dtd 17 Mar 72

1. In the subject case, the Government charges IBM with monopolization or attempted monopolization of the general purpose digital computer in violation of the Sherman Act. At the request of defendant's counsel, the Court has ordered the United States to produce certain documentation to be inspected by them. This Agency is among the several agencies that are subject to the order.

2. After discussing this matter with the Department of Justice, at which time it was pointed out that compliance might infringe on certain statutory exemptions granted to the Agency by law, it has been determined that a search for the documentation covered by the order must be undertaken. Justice has been advised, however, that we must reserve judgment regarding what documents can be made available for inspection by counsel and under what conditions.

3. Attached are three schedules that have been prepared by Justice in accordance with the Court order. Schedule 1 (Tab A) sets forth a list of instructions. Schedule 2 (Tab B) describes the documentation covered by the search. Schedule 3 (Tab C) identifies the

various agencies subject to the order. You will note that the documentation sought covers the period 1 January 1961 to 1 January 1972, and that the participating agencies must have completed this search by 15 April 1972. Accordingly, it is requested that a search be undertaken immediately of the appropriate active files in the Headquarters area. As indicated below, a survey is to be made of the inactive files maintained by the Records Center.

4. The active files in the Headquarters area are to be physically searched. Documents found responsive to Tab B are to be withdrawn from the file and separated into three categories: (a) unclassified, (b) third party proprietary data, and (c) classified. All classified data will be further separated into three subcategories: (a) secret and below, (b) top secret, and (c) codeword. The documents will then be listed by categories. Copies of such listings must reach the General Counsel prior to 15 April 1972. As regards documents containing proprietary data, arrangements will be made by Justice to have this material inspected by counsel under protective orders prohibiting further disclosures.

5. It is not necessary at this time to search for pertinent documentation stored at the Records Center. Justice has agreed to treat such materials as being "stored documents" as defined in paragraph 4 of Tab A. However, control schedules of documents retired to the Records Center must be reviewed and Records Center holdings which appear relevant to Tab B must be identified. Inactive files identified as potentially relevant will then be listed. This list should show the general nature of each file together with its overall classification and estimated volume. Copies of such listings must reach the General Counsel prior to 15 April 1972. No further action regarding inactive files is required at this time.

Attachments

Tabs A, B, & C

DISTRIBUTION:

- 1 - Each Addressee
- 1 - ExDir-Compt
- 1 - ER
- ~~1~~ - OGC Subj. - LITIGATION, CIVIL
- 1 - RJB Signer
- 1 - Chrono

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Tab

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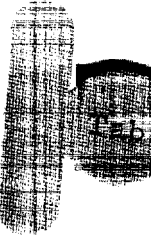
Schedule 1

1. All documents responsive to Schedule 2 found in the files of those specified offices within your agency which are set forth on Schedule 3 are to be made available to IBM for inspection and copying.
2. The search of the files and records of your agency must be completed no later than April 15, 1972, so that we can arrange for the immediate inspection by IBM representatives of the documents or copies thereof.
3. Before examination of any files is undertaken, it is requested that you ascertain whether there are particular paragraphs of Schedule 2 that are more susceptible to immediate search and results than are other paragraphs. If it be your conclusion that some priorities in search by paragraphs of Schedule 2 will yield documents which can be made available to IBM representatives for inspection at a date or dates earlier than April 15, 1972, please make your assignments on that basis and advise us as to the availability of such materials as soon as they are located, so that we can arrange for IBM representatives to begin their review of documents prior to the April 15 date wherever possible.
4. You will note that the Schedule 2 calls for documents dated, issued or published during the period January 1, 1961 to January 1, 1972. Where your personnel find that documents falling within the subject matter of Schedule 2 have been sent to storage under routine Government document procedures, it is requested that you advise us in writing as to the location, description and estimated bulk of such materials. Please do not undertake the search of such stored files in the first instance unless the search of all files, current and stored, can be completed by the April 15 date.
5. As to any documents selected from agency files in response to Schedule 2 that are classified, or contain classified or proprietary materials, it is requested that these sensitive documents be segregated from the non-sensitive ones. Arrangements will be made for inspection of these documents by IBM

representatives having appropriate security clearances, and under such conditions that the rights of the Government and third parties to be protected against breaches of security or dissemination of sensitive materials can be fully protected.

6. Any questions you may have as to your agency's compliance with this Court order should be addressed to Edward R. Kenney (Code 187, Extension 2417), Antitrust Division, U. S. Department of Justice, Washington, D. C. 20530.

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Schedule 2

In interpreting each paragraph of this schedule, the following definitions shall apply:

Comperitor/Competition: Comperitor and competition include past, present and potential competitors and competition.

Electronic Data Processing Product or Service: Electronic Data Processing Product or Service includes any product or service which is peculiar to and an integral part of an electronic data processing system.

Supplier of Any Electronic Data Processing Product or Service: Supplier of Any Electronic Data Processing Product or Service includes each person, including the United States, which supplied or supplies or has offered to supply any electronic data processing product or service.

Electronic Data Processing System: An electronic data processing system consists of a machine or a group of automatically intercommunicating machine units capable of entering, receiving, storing, classifying, computing and/or recording data, which system includes at least one central processing unit and one or more storage facilities, together with various input and output equipment.

Documents requested herein shall be those dated, issued or published from January 1, 1961 to January 1, 1972.]-

Documents To Be Produced

1. The following documents concerning any supplier of any electronic data processing system:

(a) analyses, appraisals, studies, reports or surveys relating to the relative strengths or weaknesses of that supplier in any segment of the electronic data processing industry, or the relative growth, profits or position of that supplier in such industry;

(b) analyses, appraisals, studies, reports or surveys relating to the history of any such supplier in any segment of the electronic data processing industry, including its entry into or exit from any part of that industry and any barriers, deterrents (or the lack thereof) to such entry or exit.

2. All analyses, appraisals, studies, reports or surveys relating to any electronic data processing system, or basic major part thereof, which relate to:

(a) any evaluation thereof, including the history, life span, availability, performance or specifications of such products (but excluding mechanical, maintenance and day-to-day performance matters);

(b) any comparison involving, or competition between, any such product and any other product;

(c) the number, kind or variety thereof available;

(d) any substantial technological change in or cancellation or withdrawal thereof.

3. All analyses, appraisals, studies, reports or surveys relating to the procurement or use of any electronic data processing system, or basic major part thereof, by any customer including any governmental agency with respect to:

(a) the organization, management, evaluation, selection, transfer or disposal of such product by such customer;

(b) the capacity or willingness, or lack thereof, of any such customer to purchase or lease any such product from any supplier or to itself make, perform or supply any such product thereof instead of or in addition to its existing or then existing supplier;

(c) the ability or capacity, or lack thereof, of any such customer to use, evaluate or select among, or to transfer or dispose of, any such product;

(d) the prices, terms, or conditions for any electronic data processing product offered, negotiated, considered, sought, accepted or rejected by any such customer.

4. All analyses, appraisals, studies, reports or surveys relating to any electronic data processing product or grouping thereof which show or tend to show the market or segment of commerce in which such products compete including, but not limited to:

(a) the existence of a definable "market", "submarket" or "part" of commerce in which such products compete;

(b) the identity or nature of any product, service, supplier, purchaser or customer therein;

(c) the nature, extent or effectiveness of competition therein;

(d) the relative or absolute position of any supplier therein;

(e) any market power of any supplier of any electronic data processing product or service therein;

(f) any acquisition or maintenance or any attempt or intent to acquire or maintain market power therein;

(g) any possibility or probability that any supplier of any electronic data processing product or service might or may injure or destroy competition therein or acquire or maintain any market power therein;

(h) any act, policy, practice, course of conduct, dealing or transaction which might accomplish or contribute to the injury or destruction of competition or the acquisition or maintenance of market power therein.

5. All documents which show any request or demand by any customer, including any governmental agency, for prices or a pricing system whereby two or more electronic

data processing products or services are included in a single price.

6. All documents relating to any announcement by any supplier of a new electronic data processing product or service, or a change or modification of a prior announced electronic data processing product or service, including:

(a) the time, timing or content of such announcement;

(b) any change in or cancellation of any electronic data processing product or service or any specification or capability thereof;

(c) the satisfaction or failure to satisfy any test or other standard;

(d) any manner in which such announcement was premature in terms of the design, development or availability of such product or service.

7. All documents which show the percentage return (whether profit or loss) on investment, or on revenue realized or anticipated, by any supplier of any electronic data processing product or service on any such product or service or the relationship any such return has or has not to any average or standard of comparison or to the return on any other data processing product or service.

8. All documents which show any giving or offering by any supplier of any electronic data processing product or service of a price, product, service, term, condition, financing arrangement, or other consideration to any customer which is not offered or otherwise made available to all customers.

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Schedule 3

Atomic Energy Commission
Headquarters, Washington, D.C. and Germantown, Maryland

National Aeronautics & Space Administration
NASA Headquarters, 300 7th Street, S.W., Washington, D.C.
Goddard Space Center
John F. Kennedy Space Center

Central Intelligence Agency
Headquarters, Washington, D.C. and McLean, Virginia

Department of Commerce
NOAA Headquarters, Rockville, Maryland

Department of Health, Education & Welfare
National Institutes of Health, Bethesda, Maryland

National Security Agency
Headquarters, Fort Meade, Maryland

General Services Administration
Central Office, Federal Supply Service, ADP Procurement
Division, Washington, D.C.

Department of Transportation
Headquarters, U.S. Coast Guard, Washington, D.C.

Department of Defense
Advanced Research Project Agency, Arlington, Virginia
ADPESO, The Pentagon, Washington, D.C.
Army Materiel Command, Philadelphia, Pennsylvania
Naval Weapons Laboratory, Dahlgren, Virginia
Directorate of Defense Research and Engineering,
Office of the Deputy Director for Electronics
and Information Systems, The Pentagon,
Washington, D.C.

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SENDER WILL CHECK CLASSIFICATION
UNCLASSIFIED CONFIDENTIAL SECRET

OFFICIAL ROUTING SLIP

TO	NAME AND ADDRESS	DATE	INITIALS
1	ExDir-Compt Rm 7D 59, Hqs.	4 APR 1972	
2	OGC Rm 7D07, Hqs.		
3			
4			
5			
6			

<input type="checkbox"/>	ACTION	<input type="checkbox"/>	DIRECT REPLY	<input type="checkbox"/>	PREPARE REPLY
<input type="checkbox"/>	APPROVAL	<input type="checkbox"/>	DISPATCH	<input type="checkbox"/>	RECOMMENDATION
<input type="checkbox"/>	COMMENT	<input type="checkbox"/>	FILE	<input type="checkbox"/>	RETURN
<input type="checkbox"/>	CONCURRENCE	<input type="checkbox"/>	INFORMATION	<input type="checkbox"/>	SIGNATURE

Remarks:

FOLD HERE TO RETURN TO SENDER

FROM: NAME, ADDRESS AND PHONE NO.

DATE

(OGC), 7D07, Hqs. 4 Apr 72

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TRANSMITTAL SLIP		DATE
TO: <i>Ex. Dir. - Compt.</i>		
ROOM NO.	BUILDING	
REMARKS:		
<p><i>Bill</i></p> <p><i>we believe this dis-</i> <i>cretion is needed to</i> <i>meet the requirements</i> <i>of the court order in</i> <i>the IBM anti-trust suit.</i> <i>Recommend signature</i> <i>Lutty</i></p> <p><i>(Note: 15 Apr. due date)</i></p>		
FROM: _____		
ROOM NO.	BUILDING	EXTENSION

FORM NO. 241
1 FEB 55

REPLACES FORM 36-8
WHICH MAY BE USED.

(47)